



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Mark Hans Emanuel
Serial No. : 09/486,977
Filed : March 6, 2000
Title : SURGICAL ENDOSCOPIC CUTTING DEVICE AND METHOD FOR ITS USE

Art Unit : 3731
Examiner : W. Lewis

Mail Stop Amendment

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT OF FEBRUARY 27, 2006

The Office has required the restriction of claims: 20-23, 38, 57-61, and 68-71 (Group I); and 39-56 and 62-67 (Group II). This restriction is respectfully traversed.

Applicant elects, with traverse, Group I. However, applicant submits that both Groups I and II should once again be examined on their merits because the restriction requirement is improper. See MPEP § 808

Specifically, the Examiner has not made any attempt to show that examination of Groups I and II in the same application would present a serious burden on the Examiner. Section 808.02 of the MPEP requires that the Office "must explain why there would be a serious burden on the examiner if restriction is not required." However, the Examiner has not provided any indication of any burden, let alone a serious one. Moreover, even if the Examiner had attempted to demonstrate a "serious burden," the prosecution history of the present application clearly establishes that an examination of Groups I and II in the same application would not present a serious burden on the Examiner. In particular, the Examiner has already examined claims in both groups in the past three Office Actions (i.e., the Office Actions mailed on Dec. 22, 2003; Oct. 20, 2004; and Sept. 7, 2005) and over a period of almost two years without ever deeming the burden of examination as being serious enough to merit a restriction requirement.

Accordingly, applicant submits that this restriction requirement should be withdrawn and respectfully submits that the Office should issue a new Office Action which acts upon previously considered Groups I and II.

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Attorney's Docket No.: 00167-404001 / 02-31-0340

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Respectfully submitted,

Date: _____

3/27/06



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